

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SPECTAGUARD ACQUISITION, LLC t/a
ALLIED SECURITY¹

Employer

and

Case 4–RC-20720

UNITED FEDERATION OF SECURITY
OFFICERS, INC.

Petitioner

REGIONAL DIRECTOR’S DECISION AND ORDER

The Employer, Allied Security, provides security, hospitality, and community development services to commercial and educational institutions and private employers throughout the United States. Pursuant to a contract effective July 2003 through July 2004, the Employer provides services to the James Street Improvement District (JSID) in Lancaster, Pennsylvania. The Petitioner, United Federation of Security Officers, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of about six or seven Ambassadors employed by the Employer at the JSID.² The Petitioner exclusively admits to membership individuals employed as guards within the meaning of Section 9(b)(3) of the Act, and the Employer contends that the employees in the petitioned-for unit are not guards and therefore the petition should be dismissed. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties and, as discussed below, I have concluded that the Ambassadors are not guards within the meaning of Section 9(b)(3) of the Act. In this Decision, I will first provide an overview of the Employer’s operations. Then, I will review the factors that must be evaluated in determining whether Ambassadors are guards. Finally, I will present in detail the facts and reasoning that support my conclusion.

¹ The Employer’s name was amended at the hearing.

² While the petition literally seeks a unit of “security guards,” it is undisputed that the employees in the petitioned-for unit are called Ambassadors.

I. OVERVIEW OF OPERATIONS

The JSID is a non-profit organization created to improve the quality of life in an area covering about one and a half miles in Lancaster, Pennsylvania. The goal of the JSID is to enhance commercial and economic development and increase home ownership in the area. JSID seeks to reduce litter, graffiti, crime, and other forms of anti-social behavior as well as to build community pride. In support of these goals, JSID has a contract with the Employer to provide the services of Ambassadors, who patrol the district by bicycle providing various hospitality and safety-related services.

The Employer does not have an office within the district; its employees work out of JSID's office in Lancaster. JSID's Director, Lisa Riggs, works full time at the office.³ Supervisor Michael Kelly is in charge of the Employer's operations in the JSID. Kelly, like the Ambassadors he supervises, spends most of his time patrolling the district on a bicycle.⁴

II. FACTORS RELEVANT TO EVALUATING GUARD STATUS

Section 9(b)(3) of the Act provides that the Board cannot find a unit appropriate if it includes with other employees, "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." It further states that labor organizations cannot be certified to represent guards if they admit employees other than guards to membership.

The legislative history of Section 9(b)(3) of the Act indicates that the separation of guards from other employees for the purposes of collective bargaining was intended to avoid conflicting loyalties and to ensure an employer that it could have a core of plant protection employees in the event of industrial unrest. *Lion Country Safari*, 225 NLRB 969 (1976); *McDonnell Aircraft Corporation*, 109 NLRB 967, 969 (1954). The Board has stated that in determining whether employees are guards, it is primarily concerned with the nature of the employees' duties and that employees are guards if they are charged with "guard responsibilities" that are not a minor or incidental part of their overall responsibilities. *The Boeing Company*, 328 NLRB 128, 130 (1999). The Board has defined guard responsibilities as those typically associated with traditional police and plant security functions such as: (1) the enforcement of rules directed at other employees; (2) the authority to compel compliance with those rules; (3) training in weapons and security procedures; (4) possession of weapons; (5) participation in security rounds or patrols; (6) monitoring and controlling access to the employer's premises; and (7) wearing guard-type uniforms or displaying other indicia of guard status. *The Boeing Co.*, *supra*. See also *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); *55 Liberty Owners*

³ An intern sometimes works with Riggs.

⁴ The parties stipulated that Kelly and Roving Account Manager Leon Grimm are excluded from the bargaining unit as supervisors within the meaning of Section 2(11) of the Act.

Corp., 318 NLRB 308, 310 (1995); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993); *Burns International Security Services*, 300 NLRB 298, 300 (1990), *enfd. denied* 942 F.2d 519 (8th Cir. 1991).

III. FACTS

The Ambassadors work on two shifts, Monday through Friday, from 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 10:00 p.m. On weekends, there is one shift from 3:00 p.m. to 10:00 p.m. At the start of each shift, Ambassadors report to JSID's office where they sign in and pick up their bicycles. After checking the condition of their bicycles, they look at a bulletin board notice that indicates if there is anything in particular to watch out for, such as suspicious behavior in the area. Ambassadors pedal around an assigned zone within the district observing the area and speaking to members of the public. They have no set route to patrol other than to appear at the district's three public schools at the beginning and the end of each school day. As a routine part of their patrols, they regularly visit businesses and attempt to build relationships with residents. They are expected to assist residents in matters such as rescuing cats from trees and finding missing children. If the Ambassadors notice problems such as graffiti, potholes, trash, abandoned cars, or suspicious activity, they make written reports of their observations and turn them over to Lisa Riggs. At the end of each day they complete daily logs, which indicate what they did every half hour. They also prepare Incident Reports to describe anything out of the ordinary that they have noticed during their shift. The Employer views their presence as a deterrent to crime and an enhancement to neighborhood safety and quality of life.

The Ambassadors work collaboratively with safety providers such as local police forces and hospital and college security forces. They have no authority to arrest or restrain anyone. Thus, if they notice a crime in progress or a situation that requires law enforcement they are to radio a report to a communication center run by a local hospital and request that the appropriate authority be dispatched. They are expected to remain on the scene until the authorities arrive but not to intervene unless there is a life-threatening situation. Similarly, law enforcement authorities may radio Ambassadors through the hospital communication center and ask them to report back if they observe a particular individual in their patrol area, but they are not to attempt to apprehend that person. Instead, if they locate someone matching the description, they report it to the proper authorities.

The Ambassadors are not responsible for the security of JSID's office. They have no obligation to protect the property of residents or businesses within the district, and they are not expected to respond to the security alarms of property owners.

Ambassadors are not bonded and are not authorized to carry weapons, handcuffs, or any other equipment that could be used to enforce rules or restrain individuals physically.⁵ In warm weather, the Ambassadors wear black shoes, socks, pants or shorts, gloves, bicycle helmets, and red polo shirts

⁵ On one occasion, an Ambassador handcuffed an adolescent as a joke. The Ambassador was counseled and threatened with termination by Kelly and instructed never to carry handcuffs.

with the JSID logo on each shoulder and the word “Security” written across the back. In colder weather, the Ambassadors also wear jackets that are similar in design to the polo shirts. Their bicycles display the word “Security” as do their black bicycle bags. The Ambassadors do not wear badges. On patrol, they carry a radio, a flashlight, and brochures to distribute to the public concerning their functions. Ambassadors earn \$10 per hour.

Ambassadors employed in the JSID receive an eight-hour training course, which is the same training given to Security Guards that the Employer employs elsewhere.⁶ This training course deals with the history of the Employer, handling difficult individuals, legal authority and limitations on guards, and report writing.⁷ The Ambassadors employed at JSID receive substantial additional training that is unique to them. They study patrol procedures, customer service, observational skills, and bicycle safety. All employees of the Employer, including office employees, receive basic security guard training because it contains certain skills that are common to all jobs. The training guide for the Ambassadors in the JSID program, however, emphasizes that there are differences between the position of Ambassador and other security positions. It notes that Ambassadors work for everyone who resides in or visits the district, as opposed to the interests of a particular institution, and it emphasizes public relations, projecting a positive image, and building a sense of community.

The Internet advertisement for the Ambassador job indicated that experience in security, law enforcement, or the military is preferred for the position. Most but not all of the Ambassadors have such experience. Ambassadors are required to pass a background check to be hired.

Ambassadors distribute a brochure intended to educate the public about JSID. Among other things, it states that, “The bike squad will provide an additional safety presence in targeted areas within the JSID.” It further states that they “do not have any special jurisdiction or arrest powers,” and that they are not a replacement or substitute for the police, but that they “have the same authority as a resident/citizen, serving as extra ‘eyes and ears’ on the street.” In case of an emergency, the brochure instructs residents to contact 911.

IV. ANALYSIS

The Ambassadors working for JSID have various roles. While riding bicycles through the district, they are expected to interact courteously with people and to provide a reassuring presence to the community. For public relations purposes, they distribute literature intended to educate the public about JSID. They also observe and make reports concerning any problems that detract from the quality

⁶ The Employer is a nation-wide company that primarily provides traditional security services rather than bicycle patrol employees like the Ambassadors. All employees of the Employer may voluntarily receive additional security guard training, which is of particular interest to individuals seeking advancement to other positions with the Employer.

⁷ The training manual includes instructions for security guards in the event of a strike, but it is clear that the Employer’s Ambassadors do not have any responsibilities relating to strikes.

of life within the district, including safety and crime prevention matters. In addition, the Employer views their visible presence as a deterrent to crime.

The Ambassador's primary function, however, is not to provide security directly. Thus, they are not bonded, do not wear badges, and may not carry weapons or restraint devices. While the Ambassadors are charged with observing suspicious activity, they are instructed merely to enter their suspicions into a report, along with their other observations. If they observe criminal conduct in progress, unless it is a life-threatening situation, they are to report it to a dispatcher who will contact the appropriate authority to handle the situation. The Employer has no property in the district for the Ambassadors to protect; indeed, the Ambassadors are not even responsible for the security of JSID's office. They do not have assigned rounds and are not expected to protect the property of residents or businesses within the district. They also do not enforce any rules against other employees. Although the Ambassadors receive the same basic training as the Employer's security guards, all employees of the Employer receive this training, and most of the Ambassadors' training is unique to their position and focuses on issues other than security.

The Petitioner contends that the Ambassadors' guard status is demonstrated by the fact that they wear uniforms and ride bicycles that display the word "Security." While this is a factor favoring a finding of guard status, the wearing of a distinctive uniform, in itself, does not confer guard status. *Purolator Courier Corp.*, 300 NLRB 812 (1990).

The Ambassadors' duties and responsibilities are not primarily those of guards. While they wear "Security" insignia, patrol their areas, and report suspicious activities to the appropriate authorities, these factors are outweighed by the factors indicating nonguard status. In particular, they do not carry weapons, and they have no authority to control access to the district or enforce rules to protect persons or property. Accordingly, I find that they are not employed as guards within the meaning of Section 9(b)(3) of the Act. *55 Liberty Owners Corp.*, 318 NLRB 308; 310 (1995). See also *Madison Square Garden*, 325 NLRB 971 (1998); *Wolverine Dispatch, Inc.*, 321 NLRB 796 (1996); *Lion Country Safari*, 225 NLRB 969 (1976). Cf. *Madison Square Garden*, 333 NLRB 643 (2001).⁸

The Petitioner has indicated that it is a labor organization that has been certified under Section 9(b)(3) of the Act as the collective-bargaining representative of units of guards and that it exclusively admits guards to membership. As the employees sought by the Petitioner have been found not to be guards, it is presumed that the Petitioner has no interest in participating in an election as to do so would

⁸ Significantly, in that case the "supervisors" at issue enforced the Employer's rules against other staff members, as well as members of the public. Moreover, the supervisors regularly attempted to resolve problems between patrons that ushers were unable to resolve and dealt with customers who attempted to bring inappropriate items into the facility. As such, they played a far more direct role in maintaining security than the Employer's Ambassadors.

In *Purolator*, supra, n. 8, the Board also found that where employees otherwise meet the statutory requirements for guards, the fact that they are not to take direct action against rule violators, but rather to report such activity to a third party, does not defeat their guard status. In this case, however, the Ambassadors do not otherwise meet the statutory requirements for guards.

jeopardize its Section 9(b)(3) status. Accordingly, I shall dismiss the petition. If the Petitioner desires to participate in this election, it should formally notify the undersigned promptly.

V. ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **November 24, 2003**.

Signed: November 10, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

Classification Index Numbers

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